

1 McGREGOR W. SCOTT  
2 United States Attorney  
3 LAURA D. WITHERS  
4 Assistant United States Attorney  
5 2500 Tulare Street, Suite 4401  
6 Fresno, CA 93721  
7 Phone: (559) 497-4000  
8 Fax: (559) 497-4099  
9  
10 Attorneys for Plaintiff  
11 United States of America  
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14 IN THE UNITED STATES DISTRICT COURT  
15  
16 EASTERN DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 ANTONIO GOMEZ-BARRERA,

21 Defendant.

22 CASE NO. 1:20-CR-00131-DAD-BAM

23 STIPULATION TO CONTINUE STATUS  
24 CONFERENCE AND EXCLUDE TIME UNDER  
25 SPEEDY TRIAL ACT; FINDINGS AND ORDER

26 DATE: January 13, 2021

27 TIME: 1:00 p.m.

28 COURT: Hon. Barbara A. McAuliffe

16 This case is set for status conference on January 13, 2021. On May 13, 2020, this Court issued  
17 General Order 618, which suspends all jury trials in the Eastern District of California “until further  
18 notice.” Further, pursuant to General Order 611, this Court’s declaration of judicial emergency under 18  
19 U.S.C. § 3174, and the Ninth Circuit Judicial Council’s Order of April 16, 2020 continuing this Court’s  
20 judicial emergency, this Court has allowed district judges to continue all criminal matters to a date after  
21 May 2, 2021.<sup>1</sup> This and previous General Orders, as well as the declarations of judicial emergency,  
22 were entered to address public health concerns related to COVID-19.

23 Although the General Orders and declarations of emergency address the district-wide health  
24 concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision  
25 “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record

27  
28 <sup>1</sup> A judge “may order case-by-case exceptions” at the discretion of that judge “or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-  
 2 record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such  
 3 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153  
 4 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit  
 5 findings on the record “either orally or in writing”).

6 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 7 and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial  
 8 emergency require specific supplementation. Ends-of-justice continuances are excludable only if “the  
 9 judge granted such continuance on the basis of his findings that the ends of justice served by taking such  
 10 action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C.  
 11 § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of  
 12 the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of  
 13 such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

14 The General Orders and declaration of judicial emergency exclude delay in the “ends of justice.”  
 15 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address  
 16 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has  
 17 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-  
 18 week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d  
 19 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.  
 20 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to  
 21 exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency).  
 22 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated  
 23 by the statutory rules.

24 In light of the societal context created by the foregoing, this Court should consider the following  
 25 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
 26 justice exception, § 3161(h)(7) (Local Code T4).<sup>2</sup> If continued, this Court should designate a new date  
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28 <sup>2</sup> The parties note that General Order 612 acknowledges that a district judge may make  
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.  
 Cal. March 18, 2020).

1 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any  
2 pretrial continuance must be “specifically limited in time”).

3 **STIPULATION**

4 Plaintiff United States of America, by and through its counsel of record, and defendant, by and  
5 through defendant’s counsel of record, hereby stipulate as follows:

6 1. By previous order, this matter was set for status on January 13, 2021.

7 2. By this stipulation, defendant now moves to continue the status conference until March  
8 10, 2021, and to exclude time between January 13, 2021, and March 10, 2021, under 18 U.S.C.  
9 § 3161(h)(7)(A), B(iv) [Local Code T4].

10 3. The parties agree and stipulate, and request that the Court find the following:

11 a) The government has represented that the discovery associated with this case has  
12 been either produced directly to counsel and/or made available for inspection and copying.

13 b) Counsel for defendant desires additional time to consult with her client, to review  
14 the current charges, to conduct investigation and research related to the charges, to review  
15 discovery, and discuss potential resolution with her client and counsel for the government.

16 c) Counsel for defendant believes that failure to grant the above-requested  
17 continuance would deny her the reasonable time necessary for effective preparation, taking into  
18 account the exercise of due diligence.

19 d) The government does not object to the continuance.

20 e) Based on the above-stated findings, the ends of justice served by continuing the  
21 case as requested outweigh the interest of the public and the defendant in a trial within the  
22 original date prescribed by the Speedy Trial Act.

23 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
24 et seq., within which trial must commence, the time period of January 13, 2021 to March 10,  
25 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code  
26 T4] because it results from a continuance granted by the Court at defendant’s request on the basis  
27 of the Court’s finding that the ends of justice served by taking such action outweigh the best  
28 interest of the public and the defendant in a speedy trial.

1       4. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
2 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
3 must commence.

4       IT IS SO STIPULATED.

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6       Dated: January 3, 2021

7                   McGREGOR W. SCOTT  
8                   United States Attorney

9                   /s/ LAURA D. WITHERS  
10                  LAURA D. WITHERS  
11                  Assistant United States Attorney

12       Dated: January 3, 2021

13                   /s/ JAYA C. GUPTA  
14                  JAYA C. GUPTA  
15                  Counsel for Defendant  
16                  ANTONIO GOMEZ-  
17                  BARRERA

18                   **ORDER**

19       IT IS SO ORDERED that the status conference is continued from January 13, 2021, to **March**  
20 **10, 2021, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe.** The time period through and  
21 including March 10, 2021, is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and  
22 3161(h)(7)(B)(i) and (iv) because it results from a continuance granted by the Court at defendant's request on  
23 the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest  
24 of the public and the defendant in a speedy trial.

25       IT IS SO ORDERED.

26       Dated: January 5, 2021

27                   /s/ Barbara A. McAuliffe

28                   UNITED STATES MAGISTRATE JUDGE